

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

SIMPSON VENTURES, INC.,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Civil Action File No:
)	3:07-CV-048-WHA
MIDWEST METAL PRODUCTS)	
COMPANY, INC.)	
)	
<i>Defendant.</i>)	

REPORT OF THE PARTIES' PLANNING MEETING

The following report submitted by the parties may be subject to later reconsideration in view of the fact that the Plaintiff is concurrently filing a Motion to Consolidate Simpson Ventures, Inc. v. Mid-West Metal Products Company, Inc., Civil Action No. 06-cv-00901-WKW-VPM, with the instant case. If this Court does consolidate both actions, the parties may need to revisit the following pre-trial deadlines in the future. Additionally, the parties want to make this Court aware of an *en banc* review by the United States Court of Appeals for The Federal Circuit in Egyptian Goddess, Inc. v. Swisa, Inc. & Dror Swisa, 2007 U.S. App. LEXIS 27456, which could substantially change the law/test for design patent infringement (the Federal Circuit has requested briefing as to whether the current test for design patent infringement should be changed or modified, or if a new test should be implemented). Conditional upon these contingencies, a report as to the parties' planning meeting is as follows:

1. **Rule 26(f) Meeting**: Pursuant to Fed. R. Civ. P. 26(f), subsequent to the Court's Order of December 11, 2007, the following counsel for the parties have conferred:

- a) Joseph W. Staley
Attorney for Plaintiff
- b) James M. Hinshaw
Attorney for Defendant

2. **Discovery Plan**: The parties jointly propose to the Court the following discovery plan:

- (a) **Topics**: Discovery will be needed on the following subjects:

By Plaintiff: various matters presented by the pleadings including the construction and appearance of Defendant's product, the sales of same, profits from same, willfulness of Defendant's infringement, the substance of the opinions of Defendant's expert(s), etc.

By Defendant: various matters presented by the pleadings including the validity, enforceability and/or scope of the Plaintiff's patent, the substance of the opinions of Plaintiff's expert(s), etc.

- (b) **Discovery Deadline**: Plaintiff and Defendant do agree on an appropriate discovery cut-off date. The parties propose that all discovery be commenced in time to be completed by **May 1, 2008**.

- (c) **Interrogatories**: Maximum of **30** interrogatories, including subparts, by each party to any other party. Responses due **30** days after service.

- (d) **Requests for Admission**: Maximum of **75** requests for admission, including subparts, by each party to any other party. Responses due **30** days after service.

- (e) **Requests for Production**: Maximum of **75** requests for production, including subparts, by each party to any other party. Responses due **30** days after service.

- (f) **Depositions**: Maximum of **10** depositions by the Plaintiff and **10** depositions by the Defendant. Each deposition is limited to a maximum of **7** hours (excluding expert witnesses) unless extended by agreement of the parties.

(g) **Supplementation:** Supplementation under Rule 26(e) due within **14** days of knowledge of the need to supplement but not later than **10** days before the completion of discovery.

(h) **Expert Testimony:** Unless modified by stipulation of the parties, the disclosure of expert witnesses, including a complete report under Fed. R. Civ. P. 26(a)(2)(B), from any specially retained or employed expert are due:

From the Plaintiff: **January 30, 2008** (Plaintiff has already provided Defendant with its expert report) and plaintiff shall make available its experts for deposition by **March 30, 2008**.

From the Defendant: **March 1, 2008** and Defendant shall make available its experts for deposition by **April 15, 2008**.

3. **Other Items:**

(a) **Scheduling Conference:** The parties **do not** request a scheduling conference with the Court before entry of the scheduling order.

(b) **Pretrial Conference:** The parties request a pretrial conference on or after **October 24, 2008**.

(c) **Pleadings and Parties:** Plaintiff should be allowed until **February 3, 2008** to join additional parties and to amend the pleadings.

Defendants should be allowed until **February 3, 2008** to join additional parties and to amend the pleadings.

(d) **Dispositive Motions:** All potentially dispositive motions must be filed by **August 11, 2008**.

(e) **Settlement:** Settlement cannot be further evaluated prior to the parties conducting discovery and may be enhanced by the use of additional mediation at a later date.

(f) **Final Lists:** Final lists of witnesses and exhibits under Rule 26(a)(3) should be due from Plaintiff(s) by **October 1, 2008**, from Defendant(s) by **October 1, 2008**. Parties should have **14** days after service of final lists of witnesses and exhibits to list objections under Rule 26(a) (3).

(g) **Trial:** The case should be ready for trial on **November 17, 2008**.

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